

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

DATATREASURY CORP., )  
Plaintiff, )  
vs. ) JURY TRIAL DEMAND  
MAGTEK, INC., a/k/a MAG-TEK, INC., and ) CV No.: 2-O3CV-459  
SMALL VALUE PAYMENTS COMPANY, ) CV No.:2:04-CV-85  
Defendants, )  
)

**DECLARATION OF PROF. JOHN HILES**

1. My name is John Hiles. I am over the age of twenty-one, have not been convicted of a crime involving moral turpitude, and am not otherwise disqualified from making this declaration. The following information, which is within my personal knowledge, is true and correct.

2. In connection with preparing this declaration, I have reviewed United States Patent No. 5,910,988, United States Patent No. 6,032,137 and their respective file histories along with various relevant dictionaries.

3. All of the opinions provided in this declaration are:  
a. Based upon sufficient facts and data to allow me to reach the opinions contained in this declaration;

b. My opinions expressed herein are the product of reliable principles and methods;

c. My opinions expressed herein constitute a reliable application of those principles and methods to the facts of this case; and

d. My opinions expressed herein are based upon information of a type reasonably relied upon by experts in the arts applicable (technical dictionaries, technical descriptions, technical publications, schematics, patent disclosures and claims) and analogous to the '988 and '137 patents.

4. By my education, training, and experience, as evidenced by my *curriculum vitae* (attached to declaration), I am qualified to provide testimony on the understanding of persons of ordinary skill in the art would relative to the '988 and '137 patents at the time of their filing.

5. It is my opinion that a person of ordinary skill in the art at the time of the '988 and '137 patents' filing would have the equivalent of a Bachelor of Science in a technical discipline involving computational science, such as electrical engineering, computer systems engineering, computer science, or equivalent practical experience in the field of networked computing, computer hardware or software product development, software engineering, In addition this person should have exposure to Computer Industry User Group, Vendor Training, or Trade Association event over a period of at least two years.

6. I understand that the claim terms should not be determined solely from the claim language alone, but that the broader context of the entire patent should be considered. Consequently, in this declaration, I analyze the language of each claim

element at issue in view of the broader context of term available through careful reading of the ‘988 and ‘137 patents’ claims, their specifications, and prosecution histories. Within this larger context, I give, as a person of ordinary skill in the art, what I consider to be a natural interpretation of the term image.

#### 7. My Construction of the Term Image

The term **Image** appears in claims ’26 through 41 and claims 46 through 50 of the ‘988 Patent and claims 26 through 41 and claim 43 of the ‘137 Patent. Image is used consistently in the Patents’ claims and specification in connection with the phrase, “image capture.” “Image capture” is referred to in the Patents by the use of the phrase “capture.” The Patents refer to capturing transaction data from paper transactions, documents, and receipts. (The ‘137 patent also refers specifically to capturing “the checks” in Claims 1 and 42). Claim 46 in the ‘137 Patent refers to image as follows, “capturing an image of the check at one or more remote locations and sending a captured image of the check”.

The term **image** is used in the specifications of the two DataTreasury Patents in a way that is consistent with its use in the Patents claims, as described in the previous paragraph. For example, in Col. 5, Ins. 46 through 54 of the ‘988 Patent and in Col. 5, Ins. 52 through 60 of the ‘137 Patent, the Patents specify how the DAT scanner **202** functions, “The DAT scanner **202** scans a paper receipt and generates a digital bitmap image representation called a Bitmap Image (BI) of the receipt. In the preferred embodiment, the DAT scanner **202** has the ability to support a full range of image resolution values, which are commonly measured in Dots Per Inch (DPI). Next, the DAT

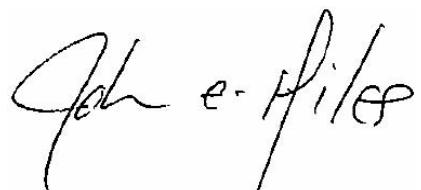
scanner **202** has the ability to perform full duplex imaging. With full duplex imaging, a scanner simultaneous [sic] captures both the front and back of a paper document.”

A person of ordinary skill in the art, after reading the surrounding claim language, disclosures and file histories, would agree that the following definition of **image** gives an accurate explanation of the term’s use in the ‘988 and ‘137 Patents, while at the same time remaining consistent with the somewhat broader definitions found in technical dictionaries, two of which are quoted below. The Construction offered for Image is as follows, “Image is defined as an optically or electronically formed representative reproduction of an object, for example, an optical reproduction formed by a lens or mirror or an electro-optical device such as a charge-coupled device (CCD), or other optical system.”

The representative nature of **image** is clearly present in the definitions of the word found in the IBM Dictionary of Computing (1994), on page 325 and in the McGraw-Hill Dictionary of Scientific and Technical Terms (1994), on page 992. The McGraw-Hill entry includes special definitions from a variety of fields, such as Acoustics, Communications, Math, and Psychology, but the most relevant one is from Physics. It reads as follows, “Any reproduction of an object produced by means of focusing light, sound, electron radiation, or other emanations coming form the object or reflected by the object.” A person of ordinary skill in the art would agree that the definition used in this construction was justifiably narrower than the definition crafted to apply to a wide variety of sciences and engineering fields. The ‘988 and ‘137 Patents only refer to images that are produced by scanner like devices and thus, representations produced through the use of acoustic or “other emanations” would not apply to the DataTreasury invention.

**DECLARATION**

In accordance with 28 U.S.C. § 1746, I, John Hiles, Professor., declare under penalty of perjury under the laws of the United States that the foregoing expert report is true and correct. Executed on the 31<sup>st</sup>of January, 2006.

A handwritten signature in black ink, appearing to read "John e. Hiles".

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JOHN HILES, PROFESSOR.